

AMENDED IN SENATE MAY 14, 2007

AMENDED IN SENATE APRIL 18, 2007

SENATE BILL

No. 410

Introduced by Senators Simitian and Perata

February 21, 2007

An act to amend Section 25742 of, and to amend and repeal Section 25740.5 of, the Public Resources Code, and to amend Section 387 of the Public Utilities Code, relating to renewable energy resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 410, as amended, Simitian. Energy: renewable energy resources.
~~Under~~

(1) *Under* existing law, the Public Utilities Commission (PUC) has regulatory authority over public utilities, including electrical corporations. Existing law requires the PUC to require the state's three largest electrical corporations, Pacific Gas and Electric Company, San Diego Gas and Electric, and Southern California Edison, to identify a separate electrical rate component to fund programs that enhance system reliability and provide in-state benefits. This rate component is a nonbypassable element of local distribution and collected on the basis of usage. Existing PUC resolutions refer to the nonbypassable rate component as a "public goods charge." The public goods charge moneys are collected to support cost-effective energy efficiency and conservation activities, public interest research and development not adequately provided by competitive and regulated markets, and renewable energy resources. Existing law requires the State Energy Resources Conservation and Development Commission (Energy Commission) to transfer funds collected from the renewable energy public goods charge into the Renewable Resource Trust Fund and establishes certain accounts

in the fund to carry out specified renewable energy purposes. Existing law requires that the Energy Commission, in carrying out the renewable energy resources program, to optimize public investment and ensure that the most cost-effective and efficient investments in renewable energy resources are vigorously pursued with a long-term goal of achieving a fully competitive and self-sustaining supply of electricity generated from renewable sources. Existing law makes legislative recommendations for allocations among specified in-state renewable electricity generation facilities, including that allocations not be made for electricity that is generated by an in-state renewable electricity generation facility that remains under an electricity purchase contract with an electrical corporation originally entered into prior to September 24, 1996, whether amended or restated thereafter.

This bill would instead recommend that allocations not be made for electricity that is generated by an in-state renewable electricity generation facility having an electricity purchase contract with an electrical corporation originally entered into prior to September 24, 1996, whether amended or restated thereafter.

Existing

(2) *Existing* law requires that 10% of the funds collected as part of the renewable energy public goods charge be deposited in the Existing Renewable Resource Account to be used for a program designed to improve the competitiveness of existing in-state renewable electricity generation facilities and to secure for the state specified benefits. *Existing law prohibits any facility from receiving payments from the account for any electricity that is sold at monthly average rates equal to or greater than a target price determined by the Energy Commission. Existing law provides that an existing facility generating electricity from biomass energy is eligible for funding from the account only if it reports certain information on fuel usage to the Energy Commission and certifies fuel usage to the satisfaction of the Energy Commission.* Existing law requires the Energy Commission to evaluate existing facilities seeking awards from the Existing Renewable Resource Account and to determine certain matter.

This bill would ~~instead~~ require the Energy Commission ~~to evaluate existing facilities seeking, in making awards from the Existing Renewable Resource Account based upon certain matter, to establish a production incentive representing the difference between target prices and the price paid for electricity, and to make payments depending upon the availability of funding.~~ *The bill would authorize the Energy*

Commission, in expending funds, to establish a time-differentiated incentive structure and to consider inflation and production costs. The bill would delete the prohibition upon any facility receiving payments from the account for electricity that is sold at monthly average rates equal to or greater than a target price determined by the Energy Commission, delete the requirement that an existing facility generating electricity from biomass is eligible for funding only if it reports certain information on fuel usage to the Energy Commission and certifies fuel usage to the satisfaction of the Energy Commission, and delete the requirement that the Energy Commission evaluate facilities seeking awards from the account. The bill would require the Energy Commission to award funding based on a facility's individual need, considering certain matters, and to use its assessment of the facility's individual need to determine the value of an award to the public relative to other renewable energy investment alternatives.

~~The~~

(3) *The existing renewables portfolio standard program requires that a retail seller of electricity, including electrical corporations, community choice aggregators, and electric service providers, purchase a specified minimum percentage of electricity generated by eligible renewable energy resources, as defined, in any given year as a specified percentage of total kilowatthours sold to retail end-use customers each calendar year (renewables portfolio standard). Under existing law, the governing board of a local publicly owned electric utility is responsible for implementing and enforcing a renewables portfolio standard that recognizes the intent of the Legislature to encourage renewable resources, while taking into consideration the effect of the standard on rates, reliability, and financial resources and the goal of environmental improvement. Existing law requires the governing board of a local publicly owned electric utility to report certain information relative to renewable energy resources to the Energy Commission and its customers.*

~~This bill would state~~ *would state* the intent of the Legislature to preserve the eligibility of electricity generated by a small hydroelectric generation facility that is sold to a retail seller within California, including electricity sold to a local ~~publicly owned~~ *publicly owned* electric utility, to meet the ~~renewable~~ *renewables* portfolio standard.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25740.5 of the Public Resources Code,
2 as added by Section 4 of Chapter 464 of the Statutes of 2006, is
3 amended to read:

4 25740.5. (a) The commission shall optimize public investment
5 and ensure that the most cost-effective and efficient investments
6 in renewable energy resources are vigorously pursued.

7 (b) The commission's long-term goal shall be a fully competitive
8 and self-sustaining supply of electricity generated from renewable
9 sources.

10 (c) The program objective shall be to increase, in the near term,
11 the quantity of California's electricity generated by in-state
12 renewable electricity generation facilities, while protecting system
13 reliability, fostering resource diversity, and obtaining the greatest
14 environmental benefits for California residents.

15 (d) An additional objective of the program shall be to identify
16 and support emerging renewable technologies in distributed
17 generation applications that have the greatest near-term commercial
18 promise and that merit targeted assistance.

19 (e) The Legislature recommends allocations among all of the
20 following:

21 (1) (A) Except as provided in subparagraph (B), production
22 incentives for new in-state renewable electricity generation
23 facilities, including repowered or refurbished facilities.

24 (B) Allocations shall not be made for electricity that is generated
25 by an in-state renewable electricity generation facility having an
26 electricity purchase contract with an electrical corporation
27 originally entered into prior to September 24, 1996, whether
28 amended or restated thereafter.

29 (C) Notwithstanding subparagraph (B), production incentives
30 may be allowed in any month for incremental new electricity
31 generated by an in-state renewable electricity generation facility
32 that is repowered or refurbished, where the electricity is delivered
33 under an electricity purchase contract with an electrical corporation
34 originally entered into prior to September 24, 1996, whether
35 amended or restated thereafter, if all of the following occur:

36 (i) The facility's electricity purchase contract provides that all
37 electricity delivered and sold under the contract is paid at a price

1 that does not exceed the Public Utilities Commission approved
2 short-run avoided cost of energy.

3 (ii) Either of the following is true:

4 (I) The electricity purchase contract is amended to provide that
5 the kilowatthours used to determine the capacity payment in any
6 time-of-delivery period in any month under the contract shall be
7 equal to the actual kilowatthour production, but no greater than
8 the five-year average of the kilowatthours delivered for the
9 corresponding time-of-delivery period and month, in the years
10 1994 to 1998, inclusive.

11 (II) The facility's installed capacity as of December 31, 1998,
12 is less than 75 percent of the nameplate capacity as stated in the
13 electricity purchase contract, the electricity purchase contract is
14 amended to provide that the kilowatthours used to determine the
15 capacity payment in any time-of-delivery period in any month
16 under the contract shall be equal to the actual kilowatthour
17 production, but no greater than the product of the five-year average
18 of the kilowatthours delivered for the corresponding
19 time-of-delivery period and month, in the years 1994 to 1998,
20 inclusive, and the ratio of installed capacity as of December 31 of
21 the previous year, but not to exceed contract nameplate capacity,
22 to the installed capacity as of December 31, 1998.

23 (iii) The production incentive is payable only with respect to
24 the kilowatthours delivered in a particular month that exceeds the
25 corresponding five-year average calculated pursuant to clause (ii).

26 (2) Rebates, buydowns, or equivalent incentives for emerging
27 renewable technologies.

28 (3) Customer education.

29 (4) Incentives for reducing fuel costs, that are confirmed to the
30 satisfaction of the commission, at solid fuel biomass energy
31 facilities in order to provide demonstrable environmental and
32 public benefits, including improved air quality.

33 (5) Solar thermal generating resources that enhance the
34 environmental value or reliability of the electrical system and that
35 require financial assistance to remain economically viable, as
36 determined by the commission. The commission may require
37 financial disclosure from applicants for purposes of this paragraph.

38 (6) Specified fuel cell technologies, if the commission makes
39 all of the following findings:

1 (A) The specified technologies have similar or better air
2 pollutant characteristics than renewable technologies in the report
3 made pursuant to Section 25748.

4 (B) The specified technologies require financial assistance to
5 become commercially viable by reference to wholesale generation
6 prices.

7 (C) The specified technologies could contribute significantly
8 to the infrastructure development or other innovation required to
9 meet the long-term objective of a self-sustaining, competitive
10 supply of electricity generated from renewable sources.

11 (7) Existing wind-generating resources, if the commission finds
12 that the existing wind-generating resources are a cost-effective
13 source of reliable energy and environmental benefits compared
14 with other in-state renewable electricity generation facilities, and
15 that the existing wind-generating resources require financial
16 assistance to remain economically viable. The commission may
17 require financial disclosure from applicants for the purposes of
18 this paragraph.

19 (f) Notwithstanding any other provision of law, moneys
20 collected for renewable energy pursuant to Article 15 (commencing
21 with Section 399) of Chapter 2.3 of Part 1 of Division 1 of the
22 Public Utilities Code shall be transferred to the Renewable
23 Resource Trust Fund. Moneys collected between January 1, 2007,
24 and January 1, 2012, shall be used for the purposes specified in
25 this chapter.

26 SEC. 2. Section 25740.5 of the Public Resources Code, as
27 added by Section 9 of Chapter 512 of the Statutes of 2006, is
28 repealed.

29 SEC. 3. Section 25742 of the Public Resources Code is
30 amended to read:

31 25742. (a) Ten percent of the funds collected pursuant to the
32 renewable energy public goods charge shall be used for programs
33 that are designed to achieve fully competitive and self-sustaining
34 existing in-state renewable electricity generation facilities, and to
35 secure for the state the environmental, economic, and reliability
36 benefits that continued operation of those facilities will provide;
37 during the 2007–2011 investment cycle. Eligibility for incentives
38 under this section shall be limited to those technologies found
39 eligible for funds by the commission pursuant to paragraphs (4),
40 (5), and (7) of subdivision (e) of Section 25740.5.

1 (b) Any funds used to support in-state renewable electricity
2 generation facilities pursuant to this section shall be expended in
3 accordance with the provisions of this ~~chapter~~ *chapter, including*
4 *the following:*

5 (1) *The commission shall establish a production incentive, which*
6 *shall not exceed payment caps established by the commission,*
7 *representing the difference between target prices and the price*
8 *paid for electricity, if sufficient funds are available. If there are*
9 *insufficient funds in any payment period to pay either the difference*
10 *between the target and price paid for electricity or the payment*
11 *caps, production incentives shall be based on the amount*
12 *determined by dividing available funds by eligible generation.*

13 (2) *The commission may establish a time-differentiated incentive*
14 *structure that encourages plants to run the maximum feasible*
15 *amount of time and that provides a higher incentive when the*
16 *plants are receiving the lowest price.*

17 (3) *The commission may consider inflation and production costs.*

18 (c) Facilities that are eligible to receive funding pursuant to this
19 section shall be registered in accordance with criteria developed
20 by the commission and those facilities shall not receive payments
21 for any electricity produced that ~~has any of the following~~
22 ~~characteristics:~~ *is used onsite.*

23 (1) ~~Is sold at monthly average rates equal to or greater than the~~
24 ~~applicable target price, as determined by the commission.~~

25 (2) ~~Is used onsite.~~

26 (d) ~~Existing facilities generating electricity from biomass energy~~
27 ~~shall be eligible for funding and otherwise considered an in-state~~
28 ~~renewable electricity generation facility only if they report to the~~
29 ~~commission the types and quantities of biomass fuels used and~~
30 ~~certify to the satisfaction of the commission that fuel utilization is~~
31 ~~limited to the fuels specified in subdivision (f) of Section 25743.~~
32 ~~The commission shall report the types and quantities of biomass~~
33 ~~fuels used by each facility to the Legislature in the reports prepared~~
34 ~~pursuant to Section 25748.~~

35 (e) (1) ~~Each existing facility seeking an award pursuant to this~~
36 ~~section shall be evaluated by the commission based on the amount~~
37 ~~of the funds being sought, the cumulative amount of funds the~~
38 ~~facility has received previously from the commission and other~~
39 ~~state sources, the value of any past and current federal or state tax~~
40 ~~credits, the facility's contract price for energy and capacity, the~~

1 prices received by similar facilities, the market value of the facility,
2 and the likelihood that the award will make the facility competitive
3 and self-sustaining within the 2007–2011 investment cycle.

4 ~~(2) The commission shall use this evaluation to determine the~~
5 ~~value of an award to the public relative to other renewable energy~~
6 ~~investment alternatives.~~

7 *(d) (1) The commission shall award funding to eligible facilities*
8 *based on a facility’s individual need. In assessing a facility’s*
9 *individual need, the commission shall, to the extent feasible,*
10 *consider all of the following:*

11 *(A) The amount of the funds being considered for an award to*
12 *the facility.*

13 *(B) The cumulative amount of funds the facility has received*
14 *previously from the commission and other state sources.*

15 *(C) The value of any current federal or state tax credits.*

16 *(D) The facility’s contract price for energy and capacity.*

17 *(E) The likelihood that the award will make the facility*
18 *competitive and self-sustaining within the 2007–2011 investment*
19 *cycle.*

20 *(F) Any other criteria as determined by the commission.*

21 *(2) The assessment shall also consider the public benefits*
22 *provided by the operation of the facility.*

23 *(3) The commission shall use its assessment of the facility’s*
24 *individual need to determine the value of an award to the public*
25 *relative to other renewable energy investment alternatives.*

26 ~~(3)~~

27 *(4) The commission shall compile its findings and report them*
28 *to the Legislature in the reports prepared pursuant to Section 25748.*

29 SEC. 4. Section 387 of the Public Utilities Code is amended
30 to read:

31 387. (a) Each governing body of a local publicly owned electric
32 utility, as defined in Section 9604, shall be responsible for
33 implementing and enforcing a renewables portfolio standard that
34 recognizes the intent of the Legislature to encourage renewable
35 resources, while taking into consideration the effect of the standard
36 on rates, reliability, and financial resources and the goal of
37 environmental improvement.

38 (b) Each local publicly owned electric utility shall report, on an
39 annual basis, to its customers and to the State Energy Resources
40 Conservation and Development Commission, the following:

1 (1) Expenditures of public goods funds collected pursuant to
2 Section 385 for eligible renewable energy resource development.
3 Reports shall contain a description of programs, expenditures, and
4 expected or actual results.

5 (2) (A) The resource mix used to serve its customers by fuel
6 type. Reports shall contain the contribution of each type of
7 renewable energy resource with separate categories for those fuels
8 that are eligible renewable energy resources as defined in Section
9 399.12, except that the electricity is delivered to the local publicly
10 owned electric utility and not a retail seller.

11 (B) Electricity shall be reported as having been delivered to the
12 local publicly owned electric utility from an eligible renewable
13 energy resource when the electricity would qualify for compliance
14 with the renewables portfolio standard if it were delivered to a
15 retail seller. It is the intent of the Legislature in enacting this
16 subparagraph to preserve the eligibility of electricity generated by
17 a small hydroelectric generation facility that is sold to a retail seller
18 within California, including electricity sold to a local
19 ~~publicly-owned~~ *publicly owned* electric utility, to meet the
20 ~~renewable~~ *renewables* portfolio standard, when that generation
21 meets the criteria set forth in Section 399.12.

22 (3) The utility's status in implementing a renewables portfolio
23 standard pursuant to subdivision (a) and the utility's progress
24 toward attaining the standard following implementation.